IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.283 OF 2007

Sujay Shamrao Karale .. .. Petitioner

V/s.

The State of Maharashtra & ors. .. Respondents

Mr.N.V. Bandiwadekar for petitioner.

Mr.R.D. Rane, Addl.GP for respondents.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.

DATED : 22nd November 2007

P.C. :

1. In this petition, the petitioner is challenging order/communication issued by respondent no.2-District Collector, Kolhapur, cancelling nomination made in his favour by a freedom fighter. The petitioner claims to be relation of freedom fighter Shankar Bhau Patil. As per policy of the State Government, freedom fighter is entitled to certain benefits, including

preference in public employment for self or for a near relative. It is the case of the petitioner that on 8.5.1986 the said Shankar Bhau Patil made an affidavit before the Executive Magistrate to nominate the petitioner for employment as his nephew. The petitioner submitted an application to respondent no.2. On 12.5.1986, respondent no.2 is said to have issued NOC to the petitioner for securing employment as nominee of the said freedom fighter. On 22.5.1986, respondent no.3-Deputy Director of Education, Kolhapur, appointed the petitioner as Clerk. On 15.7.1995, respondent no.3 issued an order terminating services of the petitioner on the ground that respondent no.2 had informed respondent no.3 that the nomination letter given by freedom fighter was false and hence cancelled. According to the petitioner, the said order was issued without giving any notice or holding any enquiry. On 3.2.1998, the petitioner filed an original application before the Maharashtra Administrative Tribunal, Mumbai, (for short “MAT”)

challenging his order of termination. Since that order of termination was based on order dated 22.3.1995 issued by respondent no.2, cancelling his nomination, the petitioner filed Writ Petition No.4311 of 1998 in this court challenging order dated 22.3.1995 issued by respondent no.2 cancelling the nomination letter. On 18.8.1998, this court allowed the writ petition and directed respondent no.2 to initiate fresh enquiry through machinery in accordance with Government Resolution dated 24.6.1997. Respondent no.2 was directed to take appropriate action on the basis of the enquiry. In view of this order, the order of termination was quashed by the MAT and the respondents were directed to reinstate the petitioner till the Collector validly cancels the nomination of the freedom fighter as per the High Court order. On 10.9.1998, the petitioner came to be reinstated.

2. Respondent no.4 was appointed as Enquiring Authority as per Government Resolution dated 24.6.1997. This fact was intimated to the petitioner by

letter dated 23.6.2005 and the petitioner was asked to appear before the Enquiring Authority on 30.6.2005. It is the case of the petitioner that he received the said notice on 30.6.2005 and hence, he could not appear before respondent no.4 and, therefore, he sent a letter dated 4.7.2005 asking for further time. On 14.7.2005, respondent no.4 acknowledged the receipt of the said letter and directed the petitioner to remain present before him on 29.8.2005. On 29.8.2005, the petitioner appeared before respondent no.4 and made an application requesting that certain documents be supplied to him. Respondent no.4 on 13.9.2005 directed the petitioner to apply to the Record Section and obtain copies of the said documents. Accordingly, on 26.9.2005, the petitioner made an application to the Record Section and requested copies of seven documents. It is the grievance of the petitioner that he did not receive copies of the documents within time and, therefore, he made an application to respondent no.4 for extension of time on 6.10.2005. On

14.10.2005, respondent no.2 supplied true copies only of two documents out of seven, which the petitioner had sought by his application dated 26.9.2005. On 5.12.2006, the petitioner received notice dated 4.12.2006 from the Accounts Officer, Audit Squad, Education, Kolhapur. The petitioner was informed vide order dated 4.12.2006 issued by respondent no.3 that his services were directed to be terminated.

3. The order dated 4.12.2006 indicates that it was issued pursuant to the order dated 14.8.2006 issued by respondent no.2, by which he had confirmed his earlier order dated 22.11.1994 cancelling the nomination letter. The petitioner is aggrieved by the said order dated 14.8.2006 and hence, he has filed the present petition.

4. We have heard at considerable length Mr.Bandiwadekar appearing for the petitioner. Mr.Bandiwadekar took us through the correspondence and the earlier order of the High Court. He contended that the petitioner had asked for copies of seven

documents. However, the respondents did not make those copies available to the petitioner. Only two documents were made available and the most relevant documents were not available. The petitioner is, therefore, gravely prejudiced. He submitted that those documents were essential as they would indicate that some other similarly situated persons have been continued in service. He further submitted that copy of the Enquiry Report, which was referred to in the impugned order, is not given to the petitioner.

5. In the impugned order, it is stated that the petitioner was unable to produce any documents to prove his relationship with the freedom fighter. This has been reiterated by Smt.Smita T. Kulkarni, Additional Chitnis, Collector office, Kolhapur in the affidavit filed in this court. The affidavit states that the Enquiring Officer by issuing notices dated 23.6.2005, 14.7.2005 and 13.9.2005, had given opportunity to the petitioner to prove his relationship with the freedom fighter. However, no documents were produced.

6. A person would be entitled to appointment in the instant scheme only if he is related to the freedom fighter. That is the basis of such appointment and, therefore, it was incumbent upon the petitioner to produce necessary documents to show his relationship. Three opportunities were given to the petitioner to produce documents. However, those documents were not produced. The petitioner may be right in saying that he was not given all the documents which he had requested. However, those documents would, at the most, suggest or establish that similarly situated persons have been continued in employment. That would not justify continuation of the petitioner in the post, if he is not related to the freedom fighter. We called upon learned counsel for the petitioner to produce documents to establish his relationship with freedom fighter Shankar Patil. Learned counsel does not have any documents in support of the petitioner's claim. If the State Government has continued persons who are not related to freedom fighters in employment

in this scheme, then such conduct of the State Government needs to be deprecated.

7. We expect the State Government to treat all its citizens with even-hand. Inasmuch as the petitioner has not been able to produce any documents to establish his relationship with freedom fighter Shankar Bhau Patil, we find no merit in this petition and we dismiss it. However, we expect the State Government to take similar action against the persons who are similarly situated.

8. Let copy of this order be sent to the concerned department.

9. Petition is disposed of in the aforestated terms.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)